Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of	
Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996	CC Docket No. 96-237

COMMENTS OF AMERITECH

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SUMMARY

Ameritech supports the Comments of the United States Telephone Association, which it believes reasonably accommodate the divergent interests of both incumbent local exchange carriers as well as non-competing qualifying local carriers, who are the only principal industry groups directly affected by Section 259 of the Telecommunications Act of 1996.

In particular, Ameritech strongly supports the tentative conclusion that Section 259 arrangements should be largely the product of negotiations among parties.

Ameritech also supports the concept that where the same non-competing carrier might be entitled to the use of the same facilities both under Section 259 and under the interconnection, unbundling, and resale provisions of Section 251, the non-competing carrier should be restricted to sharing under Section 259.

The Commission should also make clear no incumbent LEC should be required to develop, purchase, or install network infrastructure, technology, facilities or functions solely on the basis of a request from a qualifying carrier to share such elements when such incumbent LEC has not otherwise built or acquired and does not intend to build or

acquire such elements, regardless of whether in a particular case the building or acquiring of the facilities might be economically reasonable.

The Commission should further clarify that the right of a providing LEC to deny or terminate sharing on the ground of competition from the QLEC is not limited to a narrow category falling within the term "services or access," but extends to the full breadth of Section 259.

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Ameritech[1] hereby responds to the Commission's Notice of Proposed Rulemaking released November 22, 1996,[2] pertaining to the implementation of Section 259 of the Telecommunications Act of 1996.[3] Section 259 requires the sharing, where economically reasonable, of "public switched network infrastructure, technology, information, and telecommunications facilities and functions" by

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[1] Ameritech comprises Illinois Bell Telephone Company, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Wisconsin Bell, Inc., and other affiliates.

[2] In the Matter of Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket 96-237, FCC 96-456 (released November 22, 1996) [hereinafter sometimes referred to as "NPRM"].

[3] 47 U.S.C. § 259.

incumbent local exchange carriers ("LECs") in favor of non-competing local carriers who lack the incumbent's economies of scale and scope.

As a member of the United States Telephone Association ("USTA"), Ameritech has had the opportunity to review in advance the Comments that are being simultaneously filed today by that organization. USTA numbers among its members both the regional Bell companies and GTE — the "providing" LECs (or "PLECs") upon whom the statute's sharing burden lies — and the remaining independent telephone companies, who are the qualifying LECs ("QLECs") entitled to the new law's benefits. Because new market entrants who compete against incumbent LECs are barred from infrastructure sharing under Section 259, the PLECs and QLECs are the only industry groups having a direct interest in the outcome of this rulemaking. USTA's comprehensive Comments reasonably accommodate the divergent PLEC and QLEC interests, and the Commission should accord them great weight for that very reason. Ameritech supports the USTA comments, and Ameritech's own comments that follow are in substantial agreement with USTA.

I. Section 259 Should Be Implemented by Negotiation, Not By Detailed Rulemaking.

In the NPRM (at ¶ 7) the Commission has stated its tentative conclusion that "the best way for the Commission to implement Section 259, overall, is to articulate general rules and guidelines. We believe that Section 259-derived arrangements should be largely the product of negotiations among parties." Ameritech strongly supports this tentative conclusion. As USTA observes, attempts to establish rules for all possible disputes that may later arise would be counter-productive.

II. Non-Competing Carriers Should Be Required To Resort to Section 259.

The NPRM (in ¶¶ 10–14) seeks comment on how the infrastructure sharing provided for under Section 259 is related to the interconnection, unbundling, and resale that are required under Section 251. As the Commission correctly observes (¶ 11), Section 259 applies only when the qualifying carrier is not a competitor,[4] and this

[4] Section 259(b)(6) provides that an incumbent local exchange carrier need not "engage in any infrastructure sharing agreement for any services or access which are to be provided or offered to consumers by the qualifying carrier in such local exchange carrier's telephone exchange area."

is in sharp contrast to Section 251, which "plainly contemplates access by new entrants that seek to provide local exchange or exchange access service within the incumbent's service area" (*id.*). The Commission seeks to harmonize these sections by first posing the possibility that a non-competing carrier would be required to use Section 259 exclusively, even for a function that would be available as an unbundled element under Section 251(3) (*id.*). However, the Commission also pauses to consider the opposite extreme, which would allow a non-competing carrier to choose freely between Section 251 and Section 259 whenever the same function or capability seemed to be available under either of them. (¶ 13). The Commission suggests that the free-choice alternative "might tend to promote competition in local exchange markets." (¶ 14).

Ameritech believes that the benefits to competition flowing from the latter alternative would be minimal and that the Commission should make clear that non-competing carriers are compelled to obtain shared infrastructure under Section 259. The purposes that lie behind these two provisions, while complementary, are fundamentally distinct. Section 251 seeks to promote competition for local exchange service, while section 259 seeks to preserve universal local service, which is in some respects an objective that competition cannot be

counted on to serve. In addition, the criteria that must be met to obtain the incumbent's facilities are different under the two sections. Accordingly their separate existence under the statute should be preserved. USTA also supports this view.

III. The Infrastructure To Be Shared Must Already Exist.

In the NPRM the Commission has tentatively (and correctly) concluded (¶ 20) "that no incumbent LEC should be required to develop, purchase, or install network infrastructure, technology, facilities or functions solely on the basis of a request from a qualifying carrier to share such elements when such incumbent LEC has not otherwise built or acquired and does not intend to build or acquire such elements." But the reason given is that requiring such action by the PLEC would be "economically unreasonable" under Section 259(b)(1),[5] and so the Commission goes on to ask the question "whether an action could be considered economically unreasonable even if the qualifying carrier agrees to pay the costs associated with

[5] Section 259(b)(1) states, "The regulations prescribed by the Commission pursuant to this section shall . . . not require a local exchange carrier to which this section applies to take any action that is economically unreasonable or that is contrary to the public interest."

that request" (*id.*). Regrettably, the Commission appears to supply a negative answer to that question, implying that as long as the QLEC is willing to pay, the PLEC is required to supply capabilities to the QLEC for which the PLEC itself has no use in its own business.

If that is indeed what the Commission intended to embody in a tentative conclusion, the Commission should hasten to reconsider. The PLEC is most certainly not required to build new facilities solely to suit the QLEC, but that is not just because it would be, in some cases, economically unreasonable to do so. The far more fundamental reason is that under Section 259, the infrastructure must already exist, or at least be planned for by the PLEC, in order for there to be any "sharing" thereof. The word "sharing" unmistakably means that *both* the QLEC and the PLEC will be making use of the infrastructure in question, and the very title of Section 259 (to say nothing of the caption of the present rulemaking) refers to the "sharing" of infrastructure.[6] Besides, if the QLEC is the only user of the facility, it will

[6] The fact that the operative enacting words of the statute require the PLEC to "make available" the infrastructure are insufficient to overcome the use of "sharing" elsewhere, or to overcome the natural presumption that Congress, if it actually intended to require the PLEC to go beyond sharing its existing facilities and build new facilities just for the QLEC, would have said something much stronger than just "make available."

not gain any benefit from the PLEC's economies of scale or scope and might just as well have built the same facility itself.

Thus there are two tests under Section 259 that must be met separately: First, there must be some PLEC facilities, existing or planned, to be shared; and second, the sharing must be economically reasonable. To bypass the first of these requirements is to amend Section 259 drastically to say that PLECs must comply with any and all QLEC requests that are economically reasonable, which is absurdly beyond the Congressional intent. No such tentative conclusion should be adopted. Instead, the Commission should make clear that the PLEC need *never* install network architecture solely to satisfy a QLEC request, regardless of what is or is not "economically reasonable." USTA also opposes the NPRM's tentative conclusion on this point.

IV. Rural Telephone Companies Are Entitled to a Presumption That They Lack Economies of Scale.

Section 259(d)(1) provides that in order to qualify for sharing, a carrier must be one that "lacks economies of scale or scope." The Commission asks in the NPRM (at ¶ 37) whether a presumption should be created that a carrier within the definition of "rural telephone company" in Section 3(37) automatically meets this scale-or-scope test. USTA's comments answer this question in the affirmative,

and Ameritech supports that answer. Of course, the presumption should be a rebuttable one, as USTA proposes.

V. Competition by the QLEC and Termination for Cause.

Ameritech, like USTA, supports the Commission's tentative conclusion (¶ 26) that incumbent LECs are not required to share services or access that would be used by the QLEC to compete against the incumbent. Indeed, that conclusion merely restates the direct requirement of Section 259(b)(6). The Commission, however, has also noted that Section 259(a) requires the sharing of "public switched network infrastructure, technology, information, and telecommunications facilities and functions," but the wording of the exclusion in Section 259(b)(6) is that the PLEC need not "engage in any infrastructure sharing agreement for any services or access which are to be provided or offered to consumers" in competition with the PLEC. The Commission asks (¶ 27) whether this difference in wording means anything, *i.e.*, whether the words "services or access" in Section 259(b)(6) apply to everything that is subject to Section 259, or whether the right of the PLEC to deny or terminate sharing on the ground of competition from the QLEC extends only to some limited category falling within the term "services or access."

Ameritech submits that the right to deny or terminate sharing extends to the full breadth of Section 259 and that this is because the exclusion applies to "any infrastructure sharing agreement"; a correct reading of the remainder of exclusion shows that the words "for any services or access" are not intended to refer to what is being provided by the PLEC to the QLEC, but refer instead to the services or access that the QLEC provides to its own customers in competition with the PLEC. Therefore the infrastructure that need not be shared with competitors includes everything within the entire scope of Section 259. This is particularly true since in most cases, as the Commission acknowledges (¶ 26), if the QLEC is disqualified from sharing under Section 259 by reason of competition, the same QLEC as a competitor may be entitled to equivalent capabilities under Section 251.

Similar considerations apply to the question (¶ 27) whether sixty days' notice from the PLEC of a termination for cause is adequate to permit the QLEC to notify its end user customers. If the QLEC is able to obtain a corresponding capability under Section 251, the end users are unlikely to need any notice at all. Accordingly the Commission should adopt a notice requirement no longer than sixty days. USTA also supports the sixty-day rule.

VI. The Details of the Information Disclosure Requirement Should Be Left to the Negotiation of the Parties.

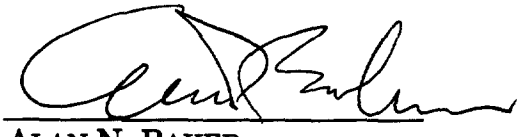
The NPRM (at ¶¶ 29–36) also seeks comment on the duty of the PLEC under Section 259(c) to provide to the QLEC "timely information on the planned deployment of telecommunications services and equipment." This does not resemble other rules that require public disclosure of network information, but only calls for a disclosure to the QLEC sharing the particular facility in question. Accordingly, Ameritech, like USTA, believes that the details thereof should not be promulgated as rules of the Commission, but should be left to the negotiation of the parties at the time the sharing of each particular facility is commenced.

VII. Conclusion

In these Comments Ameritech has only touched upon a few of the most prominent issues raised by the NPRM. As to those matters that are not specifically discussed herein, as already mentioned, Ameritech

supports and adopts the Comments of USTA, which reflect a balanced view of the interests of both PLECs and QLECs, and which should therefore be given considerable weight by the Commission in its deliberations.

Respectfully submitted,



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